



**MCI Telecommunications
Corporation**

1801 Pennsylvania Avenue, NW
Washington, DC 20006
202 887 2372
FAX 202 887 3175

Frank W. Krogh
Senior Counsel and Appellate Coordinator
Federal Law and Public Policy

ORIGINAL

August 20, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554**

**Re: CC Docket No. 96-115 - Telecommunications Carriers' Use of
Customer Proprietary Network Information (CPNI)**

Dear Ms. Salas:

Attached is a copy of a letter sent today to Chairman Kennard and the other Commissioners responding to a letter previously filed in the above-referenced docket jointly by various carriers. Please include the attached letter in the record of this proceeding.

Yours truly,

Frank W. Krogh
Frank W. Krogh

**cc: Hon. William E. Kennard, Chairman, FCC
Hon. Susan Ness, Commissioner, FCC
Hon. Michael K. Powell, Commissioner, FCC
Hon. Harold Furchtgott-Roth, Commissioner, FCC
Hon. Gloria Tristani, Commissioner, FCC
Mr. Ari Fitzgerald, Legal Advisor, Office of the Chairman
Mr. David Siddall, Legal Advisor, Office of Commissioner
Ness
Mr. Paul Misener, Senior Legal Advisor/Chief of Staff,
Office of Commissioner Furchtgott-Roth
Mr. Peter Tenhula, Office of Commissioner Powell**

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Ms. Karen Gulick, Legal Advisor, Office of Commissioner
Tristani

Mr. Dan Phythyon, Chief, Wireless Telecommunications Bureau

Ms. Kathryn C. Brown, Chief, Common Carrier Bureau

Mr. Thomas Power, Legal Advisor, Office of the Chairman

Mr. James Casserly, Senior Legal Advisor, Office of
Commissioner Ness

Mr. Kevin Martin, Legal Advisor, Office of Commissioner
Furchtgott-Roth

Mr. Kyle Dixon, Legal Advisor, Office of Commissioner Powell

Mr. Paul Gallant, Legal Advisor, Office of Commissioner
Tristani

Ms. Carol Matthey, Chief-Policy Division, Common Carrier
Bureau

Ms. Blaise Scinto, Counsel to the Bureau Chief, Common
Carrier Bureau

Mr. Brent Olson, Attorney, Policy Division, Common Carrier
Bureau



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The Hon. William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

The Hon. Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

The Hon. Michael K. Powell
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

The Hon. Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

The Hon. Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Re: CC Docket No. 96-115 - Telecommunications Carriers' Use of
Customer Proprietary Network Information (CPNI): ExParte

Dear FCC Chairman and Commissioners:

As the "one lone carrier" referred to in the July 20, 1998 letter from various carriers requesting a stay of the mechanized safeguards adopted in the Second Report and Order (Order)¹ in the above-referenced proceeding, MCI Telecommunications Corporation (MCI) wishes to take this opportunity to respond to that letter. Although MCI is not opposed to a reasonable stay of those requirements, MCI does disagree, at least in part, with the rationale of the July 20 letter and some of its implications for the protection of customer proprietary network information (CPNI).

The July 20 letter essentially requests that the customer record "flagging" requirement (that each customer record indicate

¹ Implementation of the Telecommunications Act of 1996: Telecommunications Carriers Use of Customer Proprietary Network Information and Other Customer Information: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 93-27 (rel. Feb. 26, 1998).

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near the beginning whether the customer has approved use or disclosure of her CPNI), and the "audit trail" requirement (that a record be kept of every time a customer record is accessed and by whom) be stayed pending reconsideration of the Order. The parties signing the July 20 letter have all sought reconsideration of those mechanized safeguards on various grounds and argue that a stay is justified because those requirements may well be eliminated on reconsideration. They argue that the Commission provided inadequate notice that such requirements might be imposed and that there was therefore an insufficient record supporting them.² They also argue that the burden of implementing those safeguards is vastly disproportionate to whatever marginal benefits might flow therefrom.

As the July 20 letter points out, MCI is one of the many carriers that seeks reconsideration of the audit trail requirement on burden grounds. MCI explained in its Petition for Reconsideration that the audit trail requirement should be narrowed to cover only instances when customer records are accessed for sales and marketing purposes. Otherwise, the audit trail mechanism will be unduly burdensome. As MCI has explained in its Opposition to other parties' petitions for reconsideration, however, the flagging requirement should be maintained intact. It would provide a useful check on sales and marketing personnel and would not be burdensome to implement. Although MCI will not repeat here the arguments raised in its Opposition, it should be noted that the cost estimates featured in the July 20 letter and the comment in the letter as to ineffectiveness related to the audit trail requirement, not the flagging requirement.

Accordingly, MCI's position on the merits of these safeguards differs somewhat from that of the authors of the July 20 letter. Both consumers and competition will be better off if the flagging requirement is ultimately affirmed on reconsideration. Moreover, the Commission provided adequate notice that it was considering mechanized safeguards, such as access and use restrictions, on carriers' use of CPNI. Use restrictions inherently implicate techniques, such as a flagging requirement, to provide personnel notice that a particular customer has not given her approval to use or disclose her CPNI. Otherwise, personnel would not know whether there were restrictions on the use or disclosure of a particular customer's CPNI. Thus, the flagging requirement is a "logical outgrowth"

² The notice issue was also raised in an ex parte letter, dated July 15, 1998, filed in this and other dockets by the Office of Chief Counsel for Advocacy, U.S. Small Business Administration.

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of the proposed rule," Krooritzky v. Reich, 17 F.3d 1505, 1513 (D.C. Cir. 1994), and was therefore preceded by adequate notice.

MCI is primarily concerned about the potential impact of a stay on the timing of all carriers' implementation of the safeguards adopted in the Order. As MCI has stated previously, it is crucial that final CPNI rules be in place whenever the first Bell Operating Company (BOC) obtains in-region interLATA authority for a particular state. At that point, the BOC will have access to CPNI for almost every customer in that state -- a customer database advantage that no other carrier enjoys. It will be extremely important to have in place effective CPNI safeguards to ensure that the BOCs cannot exploit their monopoly-derived customer database advantage in the competition in local and long distance service joint marketing that will emerge when BOCs gain entry into in-region long distance services. MCI has already noted the significance of BOC violations of the CPNI rules for the Commission's assessment of whether BOC entry into the in-region long distance service market will be in the public interest.³ For the reasons set forth above and in MCI's prior pleadings, it is also important that the CPNI rules and safeguards that are ultimately implemented include the flagging requirement.

Accordingly, although MCI has no objection to a reasonable stay of these requirements to give carriers more time to implement the safeguards that are ultimately affirmed on reconsideration, such stay should not delay such ultimate implementation beyond the time when, and if, the BOCs begin to gain entry into in-region long distance services. Thus, it is crucial that reconsideration be decided well in advance of BOC entry into in-region long distance services so that the CPNI rules are final and the mechanized safeguards, including a flagging requirement, are implemented by the time of such entry.

³ See Comments of MCI Telecommunications Corporation at 89-90, Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (filed Aug. 4, 1998) (detailing BellSouth's anticompetitive "CPNI-freeze" tactics).

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Otherwise, the goals of Section 222 will be frustrated and competition undermined.

Yours truly,


Frank W. Krogh

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Mr. Paul Misener, Senior Legal Advisor/Chief of Staff,
Office of Commissioner Furchtgott-Roth
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